IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

S.B.CIVIL WRIT PETITION NO.189/1998.

Hari Singh Meena. **VERSUS** State of Rajasthan & Ors.

15.09.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.Vimal Choudhary, for the petitioner.
Mr.B.K.Sharma, Deputy Government Advocate.

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In this writ petition, the petitioner has interalia prayed that by an appropriate writ, order or direction the impugned order dated 12.09.1995 dispatched on 13.11.1995 passed by the learned Deputy Secretary to the Government be quashed and set aside to the extent of charging dead rent and payment of penalty for the period the petitioner did not remain in possession of the area under the mining lease and to this extent the said order be modified and other order be maintained with a condition of payment of a penalty not exceeding twice the amount of the dead rent from the petitioner as per Rule 18 of the Rajasthan Minor Mineral Concession Rules, 1986.

The principal challenge of the petitioner is that the petitioner cannot be charged with the liability for the dead rent for the period the petitioner did not remain in the possession of the mining area. For the aforesaid contention, the petitioner has relied upon the judgments of this court in the case of Radha Kishan Sharma Vs. State of Rajasthan [S.B.Civil Writ Petition No.1108/2005] and Jai Singh Shekhawat Vs. State of Rajasthan & Others [S.B.Civil Writ Petition No.4647/1998]. It is submitted that aforesaid judgment of Jai Singh Shekhawat was challenged before the Division Bench and the same was upheld by the Division Bench vide judgment dated 01.09.1999 and the S.L.P. filed against the

aforesaid judgment was dismissed by the Hon'ble Supreme Court vide order dated 10.03.2000.

Thus, the principal point for determination is whether the petitioner was in possession of the mining area under the lease granted to the petitioner or was not in possession of the area after the order dated 08.01.1987. The petitioner in this regard as made the averment in para 5 of the ground wherein it has been stated that in the instant case neither the mineral nor the ore has been excavated, removed or utilized w.e.f. 26.07.1987 till today. Therefore, it can neither be charged nor imposed.

When the matter came up before the court on 28.07.2006, the learned counsel for the petitioner referred to the orders passed on the application for temporary injunction filed in the suit, by the petitioner and in the appeal which was filed against the order on the application for grant of temporary injunction which order has been filed as Annexure-2 to the writ petition.

Since this fact had come on the record that the petitioner had in fact filed a suit for injunction against the respondents, learned counsel for the petitioner was asked to file the copy of the plaint and the copy of the application for temporary injunction in order to see the averments made in the said plaint and the application for temporary injunction with regard to the factum of the possession over the area under the mining lease.

Learned counsel for the petitioner on 12.09.2006 filed the copy of the plaint dated 24.11.1990 and had earlier filed the copy of the application for the grant of temporary injunction. As per the averments made in the para 4 of the plaint filed before this court on 12.09.2006, following averments have come to the notice. Para 4 of the plaint reads as under:-

"(4) यह कि वादी ने अपनी स्थिति सुधारने पर इस वर्ष सितम्बर 1990 से खनन कार्य आरम्भ करने हेतु 35 मजदूर पत्थर की खुदाई व खान खोदने के लिये लगा कर अपना कार्य आरम्भ कर दिया तथा पत्थर की बिक्री हेतु खनन रवन्ना मूल देने तथा बकाया जमा कराने के लिये एक आवेदन प्रतिवादी क्रमांक तीन के कार्यालय में प्रस्तुत किया तथा निर्देशानुसार बकाया राशि 11,545 रूपये 24.10.90 तथा 29.10.90 को जमा कराये जिन्हे प्रतिवादीगण ने स्वीकार करली ।"

In continuation of the above averments made in para 4 of the plaint, in para 7 of the plaint the petitioner has made the following averments:-

"(7) यह कि वादी ने इस सम्बन्ध में दिनांक 10.10.90 को एक लिखित प्रतिवेदन उप शासन सचिव द्वारा खान एवं भू विज्ञान विभाग राजस्थान राज्य जयपुर के समक्ष प्रस्तुत किया जिस पर उन्होंने प्रतिवादी क्रमांक 2 व 3 से टिप्पणी मांगी जिसके सन्दर्भ में प्रतिवादी क्रमांक तीन ने अपनी टिप्पणी पत्रांक ख.प./करो/रि./अप्र/ख.प./नी-87/82/1302 दिनांक 8.11.90 को जिसमे प्रतिवादी नं.3 ने वादी के प्रतिवेदन में उल्लिखित तथ्यों को सत्य पाया तथा नोटिस वादी को प्राप्त नही होना पजेशन वादी से नहीं लेने, उक्त खनन को खाली होने, 11345/- रूपये बकाया होना माने हुए खनन पट्टे को रेस्टोर किया जाना राजकीय हित में माना है ।"

Based upon the above, in the plaint, the petitioner-plaintiff made the following prayer :-

"(ख) प्रतिवादीगण को स्थाई निषेधाज्ञा से पाबन्ध किया जावे कि वे वादी के खनन क्षेत्र प्लाट नं. 28 ग्राम लोठदा तहसील करौली में वादी के स्वतन्त्र उपयोग तथा खनन कार्य में किसी भी प्रकार की बाधा या अवरोध प्रत्यक्ष एवम् परोक्ष रूप से उत्पन्न नहीं करे ...."

The learned counsel for the petitioner with a view to explain the aforesaid position then submitted that the appellate court vide Annexure-2 dismissed the appeal filed by the petitioner on the ground that lease granted to the petitioner had come to an end as the same has not been renewed after 10.03.1993 and, therefore, the lease having come to an end, no relief could be granted to the petitioner. It has then been submitted that since the lease had come to an end the possession of the petitioner had already been taken by the respondents and since the possession has been taken by

the respondents, no liability for the dead rent could have been fastened on the petitioner in the light of the judgments referred to above.

The averments made in the writ petition in para 4 are also relevant and it is necessary to extract the same regarding the stand of the petitioner before this court, so far as the possession is concerned. The same reads as under:-

> "4. That thereafter the petitioner went in the office of the Mining Engineer for issue of Rawanas and deposited the balance amount of Rs.11,565/- on 24.10.1990 and 29.10.1990. In connection with his aforesaid application the office of the Mining Engineer apprised vide letter No.Kha-Aa-Karauli/Re-Apra/Khan/Hi-52/80/1205 dated 6.10.1990 that the petitioner's mining lease has already been revoked on 17.7.1987 for non-compliance of notice dated 8.1.1987 and the possession has also been taken on 26.7.1987."

In ground No.(ii) of the writ petition, it has been stated by the petitioner as follows:-

> "(ii) ..... In the instant case the competent authority has determined the lease with forfeiture of security and took possession on 26.7.1987 in place of imposition of penalty."

From the above facts it is clear that so far as the present writ petition is concerned, the petitioner with a view to challenge the impugned order imposing liability for payment of dead rent is concerned, has taken a stand that possession of the mining area was taken from the petitioner on 26.07.1987 whereas in the suit which was for the injunction filed on 24.11.1990, the stand taken in the suit was that the plaintiff was in possession of the mining area in dispute and this is corroborated even from the report sent by the Mining Engineer to the Deputy Secretary. Thus, when it came to the

filing of the suit for injunction it was in the interest of the petitioner to allege in the plaint dated 24.11.1990 that the petitioner was in possession of the mining area and he has employed labourers and extracted the mineral and should be issued rawannas as stated in para 4 and 7 of the plaint and in the prayer extracted above. As in the absence of the petitioner-plaintiff being in possession of the mining area the question of grant of temporary injunction would not have arisen. On the other hand, in the present writ petition the petitioner alleged that he, not being in the possession of the mining area since 26.07.1987, the petitioner could not be saddled with the liability of the dead rent for the period in question as he was not in possession of the area. Thus, the petitioner had been taking contradictory stand as it suits the petitioner in various proceedings. Thus, in the light of the above facts the judgments relied upon by the petitioner cannot be applied when the liability has been determined accepting the position that the petitioner has remained in possession even after the order dated 08.01.1987.

In view of the above, I am not inclined to interfere with the impugned order passed by the learned Deputy Secretary. The writ petition in the light of the above, is consequently dismissed. The stay application also stands dismissed.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.